IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 13811 of 2004

Between:

M. Raju Gupta S/o. Veeraiah Gupta,
Ram Nagar, Hyderabad,

..... PETITIONER

AND

1 The Registrar, Co-Operative Societies, Abids, Hyd.
2 The Dy. Registrar/Liquidator, Vijaya Co-Operative Urban Bank Limited (W), Banjara Hills, Hyd.
3 The Vijaya Co-Operatie Urban Bank Limited (W), D.No.6-3-200/B/6, Road No.1, Banjara Hills, Hyd-34.

.....RESPONDENS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records and issue a writ or order or direction more particularly one in the nature of writ of Mandamus declaring that the impugned proceedings dt. 23.7.2004 of the 2nd respondent is illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India apart from being violative of the principles of Natural Justice.

Counsel for the Petitioner: MR.T.LAKSHMI NARAYANA

Counsel for the Respondent No.: GP FOR COOPERATION

The Court made the following :

ORDER

Heard both sides and at their request, the main writ petition itself is taken up for disposal.

The petitioner, who is the mortgagor, files this writ petition inter alia seeking a writ of Mandamus challenging the proceedings dated 23rd July 2004 issued by the second respondent, whereunder the respondent No.3 herein refused the request of the petitioner for making construction.

The case of the petitioner is that in respect of the loan obtained in the year 2001, the said property was already mortgaged and in respect of which an award was passed by the Arbitrator and against which two appeals have already been filed and are pending on the file of the Co-operative Tribunal, Hyderabad, wherein the Tribunal directed to deposit half of the amounts in the two appeals and the same were already deposited. Further, now the petitioner seeks to make construction, which would in no way affect the mortgage and the liability as such, and as it would be any accretion to the mortgaged property, which would always be a benefit for the mortgagee and further the petitioner would not claim any equities, there cannot be any objection for the respondents in considering the request of the petitioner for making construction.

The learned counsel appearing on behalf of the respondents sought to contend that having regard to the mortgage and the liability as such, any construction made would not only vary the very structure but also ultimately lead to many problems at the time of recovery of the outstanding amount in the event of petitioner's appeals are dismissed.

Having considered the submissions made and also on perusal of material, it is seen that admittedly the appeals as against the awards passed in respect of the very loan for which the said property was mortgaged are pending before the Co-operative Tribunal, Hyderabad, wherein there is also an interim order and half of the amounts have already been deposited, all these aspects raised herein can be properly gone into in those appeals including the liabilities and such other adjustments if required to be made by approaching the very same Tribunal by filing application for any relief which the petitioner is seeking and which will be considered through proper perspective and disposed of in accordance with law on

merits. It is needless to mention that as and when such application is filed, the same shall be disposed of within four weeks after giving notice and opportunity to both sides.

With the above observations, the writ petition is dismissed. No costs.

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B.PRAKASH RAO, J

Date: 25.8.2004

NOTE:

ISSUE C.C. IN (3) DAYS.

B/O

DA/KVRK

To

1 The Registrar, Co-Operative Societies, Abids, Hyd.
2 The Dy. Registrar/Liquidator, Vijaya Co-Operative Urban Bank Limited Banjara Hills, Hyd.
3 The Vijaya Co-Operatie Urban Bank Limited (W), D.No.6-3-200/B/6,

Road No.1, Banjara Hills, Hyd-34.

4 Two CCs to the G.P. for Endowments, High Court of A.P., Hyderabad.

5 Two CD copies.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 13811 of 2004

25.8.2004